

Message Text

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21

ACTION EB-07

INFO OCT-01 AF-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOTE-00 INR-07 NSAE-00 FAA-00 SS-15 NSC-05 L-02 SSO-00

NSCE-00 INRE-00 /045 W

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O R 240955Z MAY 75

FM AMEMBASSY NAIROBI

TO SECSTATE WASHDC NIACT IMMEDIATE 3024

AMEMBASSY DAR ES SALAAM NIACT IMMEDIATE

AMEMBASSY KINSHASA NIACT IMMEDIATE

INFO AMEMBASSY ACCRA

LIMITED OFFICIAL USE NAIROBI 4251

E.O. 11652: N/A

TAGS: EAIR, BEXP, KE

SUBJECT: PANAM FLIGHT FROM NAIROBI TO KINSHASA SCHEDULED
MAY 25 CANCELLED BY EAST AFRICAN COMMUNITY

REF: STATE 118444 (NOTAL); STATE 121454 (NOTAL)

1. SUMMARY: IN ACCORDANCE WITH INSTRUCTIONS CONTAINED REFTELS, EMBASSY ATTEMPTED THROUGH GOOD OFFICES TO PREVENT WHAT APPEARED TO BE INTENTION OF EAST AFRICAN COMMUNITY (EAC) TO FORBID PAN AM FLIGHT 189 TO KINSHASA FROM MAKING SCHEDULED RUN MAY 25. PAN AM INITIATED FLIGHT UPON PUBLICATION OF ITS MAY SCHEDULE. ALTHOUGH INITIAL INTERPRETATION OF EAC ORDER WAS THAT PAN AM COULD NOT BOARD PASSENGERS, EAC OFFICIALS IN NAIROBI HAVE INFORMED PAN AM THAT IT WILL ALSO BE PREVENTED FROM FILING ANY FLIGHT PLAN FOR KINSHASA. END SUMMARY.

2. ACCORDING COMMUNITY OFFICIALS, REASON FOR COMMUNITY ORDER DELIVERED ORALLY TO PAN AM MANAGER JAMES MICHAELSEN BY COMMUNITY CIVIL AEJONAUTICS BOARD OFFICER UTANGE, WAS THAT PAN AM NEVER SOUGHT TO ENTER INTO AIRLINE TO AIRLINE DISCUSSIONS OVER WHAT
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PAN AM KNEW THERE WERE SERIOUS OBJECTIONS OF EAST AFRICAN COMMUNITY AND EAST AFRICAN AIRWAYS (EAA) TO COMPETITION WHICH PAN AM'S FLIGHT OFFERED EAA'S FLIGHT EARLIER SAME DAY TO KINSHASA. EAA FLIGHT LEAVES NAIROBI FOUR HOURS EARLIER AND ARRIVES IN KINSHASA

BEFORE PAN AM TAKES OFF, BUT EAA BELIEVES THAT MOST PASSENGERS
WOULD ELECT TO FLY PAN
AM IN PREFERENCE TO SMALLER, REGIONALLY
BASED AIRLINE.

3. MICHAELSEN'S INTERPRETATION OF BILATERAL AIR TRANSPORT AGREE-
MENT INITIALLED AD REFERENDUM BY USG AND KENYA JUNE 18, 1969,
IS THAT HE WAS REQUIRED MERELY TO FILE SCHEDULE CHANGE (ADDITION
OF FLIGHT) ON ADVICE BASIS WITHOUT NEED FOR APPROVAL BY COMMUNITY
OR EAA. HE STATES THIS IS COMMON AIRLINE PRACTICE THROUGHOUT
WORLD. MICHAELSEN BELIEVES THAT IF EAA HAD OBJECTION, IT SHOULD
HAVE REQUESTED DISCUSSIONS AND CONTENDS THAT NEITHER THE COMMUNITY
NOR EAA SOUGHT DISCUSSIONS SPECIFICALLY WITH PAN AM, THOUGH
IN LETTER DATED APRIL 11 COMMUNITY STATED TO PAN AM THAT IT
OBJECTED TO PROPOSED FLIGHT AND SUGGESTED PAN AM'S NEW FLIGHT
SCHEDULE SHOULD BE SUBJECT OF OVERALL CONSULTATIONS BETWEEN
COMMUNITY AND USG. IN HS REPLY, MICHAELSEN RECOMMENDED THAT
COMMUNITY RAISE MATTER OF GENERAL DISCUSSIONS WITH USG, WHICH
IT HAS NOT DONE. MICHAELSEN, HOWEVER, STILL HOLDS POSITION WITH
COMMUNITY THAT HE NEEDED NO PRIOR APPROVAL OF COMMUNITY OR EAA TO
INSTITUTE HIS KINSHASA FLIGHT.

4. IN ALL COMMUNICATIONS, EAA HAS RECOGNIZED THAT INITIALLED
BILATERAL IS OPERABLE. POSITION OF COMMUNITY AND EAA IS THAT IT MAY
WELL BE TRUE THAT MICHAELSEN HAS RIGHT UNDER INITIALLED BILATERAL
TO FILE SCHEDULE CHANGE ON ADVICE BASIS WITHOUT SEEKING APPROVAL.
THEY ARE INCENSED, HOWEVER, THAT IN ACTUAL FACT HE WOULD OMIT
PRIOR DISCUSSIONS. THEY SEE THE PAN
AM FLIGHT AS DIRECTLY COMPETITIVE WITH THAT OF MUCH SMALLER
REGIONAL AIRLINE IN DEVELOPING COUNTRY WHICH IS ORIGIN OF BOTH
FLIGHTS. DIRECTOR GENERAL OF EAA TOLD EMBOFF THAT QUOTE MINIMUM
OF COURTESY UNQUOTE ON PAN AM'S PART COULD HAVE PREVENTED THIS
PROBLEM. COMMUNITY'S STAND IS THAT NO MATTER WHAT INITIALLED
BILATERAL MAY SEEM TO SAY, NEW SCHEDULES, ESPECIALLY NEW FLIGHTS,
ARE SUBJECT TO COMMUNITY'S APPROVAL. COMMUNITY DID NOT RPT NOT
APPROVE PAN AM'S SCHEDULE CHANGE, FACT WHICH MICHAELSEN ADMITS.

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5. EMBASSY'S CONCLUSION IS THAT WHILE PAN AM MAY HAVE A CASE
BASED ON STRICT CONSTRUCTION OF AN INITIALLED BILATERAL, PAN AM
WAS NEEDLESSLY PROVOCATIVE IN UNILATERALLY INSTITUTING COMPETITIVE
FLIGHT WITHOUT PRIOR DISCUSSIONS (EVEN THOUGH CAB APPROVAL MIGHT
BE NEEDED FOR SUCH DISCUSSIONS).

6. MICHAELSEN HAS EXPRESSED SATISFACTION WITH WHAT HE CONSIDERED
ENERGETIC IF UNSUCCESSFUL EMBASSY INTERVENTION. OFFICIALS WITH
WHOM EMBOFFS SPOKE IN ATTEMPT TO HAVE COMMUNITY STAY ITS ORDER
WERE: CAPT. ROBERT RIVENBARK, TECHNICAL ADVISER & OPERATIONS
DIRECTOR, EAA; A.M. SHITAKHA, COMMUNICATIONS AND RESEARCH
SECRETARIAT, EAC; COL. G. W. TOKO,

DIRECTOR GENERAL, EAA; AND EDWIN MTEI, SECRETARY GENERAL, EAST
AFRICAN COMMUNITY.

7. ACTION PROPOSED: INFORM EMBASSY WHETHER LEGAL COUNSEL CONSIDERS
PAN AM'S INTERPRETATION OF ITS RIGHTS UNDER INITIALLED BILATERAL
IS CORRECT. IF SO, WE OULD RECOMMEND STRONG WRITTEN PROTEST
TO EAC. IT NOW SEEMS UNLIKELY THAT ANY STAY OR ORDER CAN BE
ACHIEVED. EMBOFF HAS JUST SPOKEN AGAIN WITH EDWIN MTEI, WHO SAID
HE WILL NOT INTERFERE WITH ORDER SHICH HE FEELS WAS TAKEN RIGHTLY
IN VIEW PAN AM'S INTRANSIGENCE. IF PAN AM INTERPRETATION IS NOT

CORRECT, WE WOULD RECOMMEND THAT PAN AM INDICATE WILLINGNESS TO
ENTER DISCUSSIONS WITH EAA PREPARATORY TO MODIFYING SCHEDULE
TO KINSHASA ON MUTUALLY ACCEPTABLE BASIS.
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